

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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subject: Authority to Sign Letter 1697

ISSUE

Whether a GS-12 Revenue Officer (RO), has the delegated authority to sign Letter 1697.¹

CONCLUSION

Yes. The RO is authorized to sign Letter 1697 and the letter is not defective because it was not signed by a District Director.

FACTS

The facts we were provided indicate that the Letter 1697, sent to the taxpayer's employer, was signed by the GS-12 RO assigned to the case. The employer argues

¹ Letter 1697 is sent to a taxpayer's employer when the Service levies on the taxpayer's take home pay and the taxpayer is not entitled to levy exemptions.

that the letter is defective because Treas. Reg. § 301.6334-2(c) states that “[i]n the case of a taxpayer who has more than one source of wages, salary, or other income, the **district director** may elect to levy on only one or more sources while leaving other sources of income free from levy.” In such a case, “the **district director** must notify the employer or other person upon whom the levy is served that no amount of the taxpayer’s wages, salary, or other income is exempt from levy.” (Emphasis added). Because the Letter 1697, which operates to notify an employer that no amount of the taxpayer’s wages is exempt from levy, was not signed by a district director, the employer argues it cannot rely on the RO’s instruction that the income stream is exempt from levy. Accordingly, the employer contends that normal exemptions under section 6334 should apply to reduce the amounts turned over to the Service.

DISCUSSION

Section 6331(a) authorizes the Commissioner to collect delinquent taxes by levy upon a taxpayer’s property and rights to property. Treas. Reg. § 301.6331-1 states that the “district director may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer.” Section 301.6334-2(c) provides, if the wages, salary or other income that is left free from levy equals or exceeds the amount to which the taxpayer would be entitled as an exemption to levy under section 6334(a)(9), then the district director may treat no amount of the wages or salary on which the district director elects to levy as exempt. The regulations specify in these circumstances that the district director must notify the employer or other person upon whom the levy is served that no amount of the taxpayer’s wages, salary, or other income is exempt from levy. Letter 1697 is used for this purpose. The employer may then rely on the notification in paying over amounts pursuant to the levy. In the absence of the notification, the employer is responsible for determining the exempt amount pursuant to section 301.6334-3. Sections 301.6334-2 and 301.6334-3 were promulgated in 1979 and amended in 1994 before the Restructuring and Reform Act of 1998 (RRA’98). RRA ’98 required the Service to modify its organizational structure to feature operating units that would serve particular groups of taxpayers with similar needs. The restructuring of the IRS resulted in the elimination of certain positions, including the position of District Director.

In proposed amendments to 26 CFR Part 301, it is explained that the title of District Director was replaced with Area Director. See 68 FR 497929-01 (Aug. 19, 2003). The elimination of the title District Director is also evidenced by the fact that in Delegation Order 1-23, the Commissioner indicated that any authority previously delegated to District Directors through the Treasury Regulations was now delegated to: Assistant Deputy Commissioners; Division Commissioners; Chiefs; and certain Directors. IRM 1.2.40.21.

Based on the foregoing, it is apparent that the position of “District Director” no longer exists and the position referred to in Treas. Reg. § 301.6334 is now Area Director. In Delegation Order (D.O.) 5-3, the Commissioner re-delegated the authority to issue a

Notice of Levy from Area Directors to: GS-09 Insolvency employees; Technical Service Advisors; GS-09 Revenue Officers; GS-09 Tax Resolution Representatives; GS-06 Tax Examiners and Collection Representatives in SBSE and W&I responsible for collection matters. See IRM 1.2.44.4. Since the lowest level to which the authority was delegated is a GS-09 RO, a GS-12 RO would also be authorized to issue a Notice of Levy. See IRM 1.11.4.4.1 (Every intervening line supervisory position up to and including the Commissioner has the same authority.) While a Letter 1697 is not specifically enumerated in D.O. 5-3, or any other delegation order, the purpose of the letter is to effectuate a levy. Issuing the notification is a central component in the procedures to levy on wages when the taxpayer has more than one source of income. Accordingly, it follows that authority to issue a Letter 1697 is included in the authority to issue a Notice of Levy as set forth in D.O. 5-3.

Aside from D.O. 5-3, several other sections of the IRM indicate that a RO is authorized to issue a Notice of Levy. IRM 5.17.3.2 states that "Revenue Officers, while acting in the course of their duties on behalf of the Area Director in levying upon property of the taxpayer, are delegates of the Secretary of Treasury having power to levy." Likewise, IRM 5.11.1.1, Notice of Levy Overview, indicates that Chapter 5.11 of the IRM provides ROs an overview of the levy process. Further, IRM 5.11.2.2.2, Preparing the Notice of Levy, indicates that a RO is not required to physically sign a levy; rather, his stamped or electronic signature will suffice. Finally, while IRM 5.11.5.4.4, which indicates that a Letter 1697 should be used to inform an employer that no wages are exempt from levy, does not specifically say that ROs may sign Letters 1697, it is located in Chapter 5.11, which, as stated above, instructs ROs on levy procedures.

In addition to Delegation Orders and the IRM, the GS-12 RO's position description also makes clear that ROs may execute levies. The position description for a GS-12 RO within SBSE states, numerous times, that the Officer will collect delinquent tax and take enforced collection actions using collection tools such as levies. Further, under Supervisory Controls, the position description states that the Officer will decide when to take appropriate collection actions and will obtain managerial concurrence only when necessary.

Based on the foregoing, it is our opinion that a GS-12 RO is authorized to sign a Letter 1697 issuing a Notice of Levy to an employer in cases in which no amount of the wages is exempt from levy.

If you have any questions please contact Jennifer Formagus at (202) 317-5646 or Alina Solodchikova at (202) 317-5209.

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